## REMARKS

The instant Amendment is filed in response to the official action dated October 20, 2004. Reconsideration is respectfully requested.

The status of the claims is as follows:

Claims 1-7, 9-28, 30-33, 35-36, and 61-65 are currently pending.

Of the above, claims 64-65 are withdrawn from consideration.

Claims 1-7, 9-28, 30-33, 35-36, and 61-63 stand rejected.

Claims 1, 33, 35-36, and 61 have been amended.

The Examiner has rejected claims 1-7, 9-20, 26-29, 31-33, and 35-36 under 35 U.S.C. 102(e) as being anticipated by Kahn et al. (USP 6,401,079). Specifically, the official action indicates on page 7 that the limitation, the identified transactions include collected punch information, does not change the step of forming one or more completed shifts, e.g., the way the data is collected does not functionally relate to the step in the method. The Applicants have amended claim 1 to include the step of "collecting information corresponding to identified transactions, the identified transactions including punch information", and to recite in the forming step "forming one or more completed shifts, responsive to the identified transactions and the employee's

-15-

schedule". The Applicants have similarly amended base claims 33 and 35-36 to include the language "collecting (or collects) information corresponding to identified transactions, the identified transactions including punch information". The Applicants respectfully submit that the limitations recited in each step of amended claims 1 and 33 functionally relate to the respective step. The Applicants further submit that the limitations corresponding to each element of amended claims 35-36 functionally relate to the respective element. In addition, the Applicants respectfully point out that <u>the Kahn reference does not disclose calculating compensation based on actual attendance collected from punch information</u> with any or all of IN/OUT information, timestamps, and break indications collected by a reader or biometrics device, as indicated on page 6 of the official action. The Kahn reference therefore does not anticipate amended claims 1, 33, and 35-36 and the claims dependent therefrom. Accordingly, it is respectfully submitted that the rejections of claims 1-7, 9-20, 26-29, 31-33, and 35-36 under section 102 of the Patent Laws are unwarranted and should be withdrawn.

The Examiner has rejected dependent claims 21-25 and 30 under 35 U.S.C. 103(a) as being unpatentable over Kahn et al.

-16-

Specifically, the official action indicates on page 7 that the Applicants did not seasonably traverse the Official Notice statement that it is well known in the art to "punch in" and "punch out" using a card reader or swipe action to generate hours worked, tardiness, overtime, etc. The Applicants concede that they are not the first to invent the process of generating hours worked, tardiness, overtime, etc., by "punching in" and "punching out" using a card reader or swipe action. The Applicants respectfully submit, however, that they are the first to invent a method of automatically calculating an employee's compensation, in a processor, that includes the step of collecting information corresponding to identified transactions, the identified transactions including punch information, in combination with the other steps recited in amended claim 1. The Applicants further submit that amended claim 1 and the claims dependent therefrom (including dependent claims 21-25 and 30) recite non-obvious subject matter that distinguishes over the cited reference.

It is well settled that the results and advantages produced by the claimed subject matter cannot be ignored when determining the patentability of the subject matter "as a whole". Because the Kahn reference fails to recognize the results and advantages produced by the subject matter of amended claim 1 and claims 21-25

-17-

and 30 dependent therefrom, and, in fact, is completely devoid of disclosure relating to such results and advantages, amended claim 1 and claims 21-25 and 30 are not rendered obvious by the Kahn reference. Accordingly, the rejections of claims 21-25 and 30 under 35 U.S.C. 103(a) are unwarranted and should be withdrawn.

Specifically, transactions, e.g., "punches", are entered into the Applicants' system at one or more entry terminals **4** (e.g., a time clock employing magnetically or optically encoded cards that are "swiped" through a magnetic or optical card reader by the employee), which are polled by a poller/merger **6** (see page 1, lines 11-13, page 4, lines 19-20, and Fig. 1 of the application). For example, a "punch in" may specify a time when the employee begins work, either at the start of the work day or at the end of a scheduled break; and, a "punch out" may specify a time when the employee finishes work, either at the start of a scheduled break or at the end of the work day (see page 5, line 27, to page 6, line 2, of the application). Actual punches can come in a number of varieties, e.g., IN/OUT punches, transfer punches that change the employee's Labor Allocation Class (LAC), and special pay punches that award the employee special pay (see page 6, lines 15-18, of the application). Accordingly, identified transactions such as punches may specify (1) actual times when the employee

-18-

begins and finishes sub-shifts and completed shifts (IN/OUT punches), (2) actual times when the employee changes work assignments during the shift (transfer punches), and (3) whether the employee should be awarded a certain amount of special pay time (special pay punches).

Because the Applicants' system operates on identified transactions such as punch data, the Applicants' system can automatically determine the compensation for an employee who (1) begins and finishes work at various times during a complete shift, (2) performs different duties during various sub-shifts within the complete shift, and (3) qualifies for certain amounts of special pay time.

In contrast, as indicated in the official action, Kahn et al. do not disclose calculating compensation based on actual attendance collected from punch data. Instead, the Kahn system merely calculates compensation based on timesheet data (i.e., hours worked and paid time-off during a particular pay period) and non-timesheet data (i.e., bonuses, commissions, tips, and other non-hourly or salary based earnings during the pay period). Such timesheet and non-timesheet data is collected, i.e., imported or manually keyed into the Kahn system, on a daily basis or at the

-19-

end of the pay period (see column 15, lines 48-57, of Kahn et al.).

Because such timesheet and non-timesheet data is imported or manually keyed into the Kahn system on a daily basis or at the end of the pay period, the Kahn system cannot be easily used for _automatically_ determining the compensation for an employee. Being able to calculate an employee's compensation automatically in a processor is an important advantage of the Applicants' system. As recited in amended claim 1, the Applicants' method of automatically calculating an employee's compensation in a processor includes the step of collecting information corresponding to identified transactions, in which the identified transactions include punch information. As explained above, this collecting step is not disclosed in the Kahn reference, nor is it disclosed in combination with the other steps recited in amended claim 1.

Because the Kahn reference fails to recognize the results and advantages produced by the subject matter of amended claim 1 and claims 21-25 and 30 dependent therefrom, e.g., providing a method of automatically calculating an employee's compensation in a processor, amended claim 1 and claims 21-25 and 30 are not rendered obvious by the Kahn reference. Accordingly, the

-20-

rejections of claims 21-25 and 30 and the claims dependent therefrom under section 103 of the Patent Laws are unwarranted and should be withdrawn.

The Examiner has rejected claims 61-63 under 35 U.S.C. 103(a) as being unpatentable over Kahn et al. in view of Wynn et al. (USP 5,717,867). Specifically, the official action indicates that the Kahn reference discloses all of the structural elements of the claimed invention, but fails to disclose identifying an earliest transaction from among the identified transactions, qualifying one or more shifts, and selecting a shift from the qualified shifts. The official action further indicates that the Wynn reference discloses the concept of determining and approving overtime worked, job changes, and different work zone assignments of each employee based on the time clock, which sends the information to a computerized system to generate accounting records. The official action concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Kahn system to include the time clock system of Wynn et al. to qualify one or more shifts such as overtime, job changes, or special department work, as taught by Wynn et al., to facilitate and determine a different hourly wage.

-21-

The Applicants respectfully submit, however, that activities such as determining and approving overtime worked, job changes, and different work zone assignments of each employee based on a time clock, as disclosed by Wynn *et al.*, are not the same as making "shift assignments", *i.e.*, associating a set of transactions occurring during a limited contiguous time period with a shift and a set of work rules, as recited in amended claim 61 and claims 62-63 dependent therefrom. As described in the instant application, the term "shift" refers to a contiguous period of time in which an employee is performing his work duties, with the exception of shorter periods of time called "breaks" (see page 5, lines 24-26, of the application). <u>Clearly, determining and approving overtime worked, job changes, and different work zone assignments of an employee are not the same as making a shift assignment for that employee, in accordance with the methods of claims 61-63</u>. The Applicants therefore respectfully submit that the Wynn reference fails to cure the deficiencies of the Kahn reference.

The Applicants also point out that the capability of automatically making shift assignments in a processor, in accordance with claims 61-63, is another important advantage of the Applicants' system. For example, when making such a shift

-22-

assignment, the earliest transaction in a set of transactions is identified first. Next, one or more shifts qualified for the shift assignment are found based on this earliest transaction, and among these shifts, the best match is selected for the shift assignment (see page 6, lines 20-31, of the application). Because the Applicants' system operates on identified transactions such as IN/OUT punches, transfer punches, and special pay punches, the Applicants' system has easy access to all of the data necessary for _automatically_ making such shift assignments.

Not only does the Wynn reference fail to disclose the activity of making a shift assignment for an employee, but it also teaches away from performing such activities. For example, the Wynn reference describes an integrated accounting system which minimizes paperwork by interactively linking employees, supervisors, and the computerized accounting system at a time clock each time the employee begins and finishes his shift (see column 35, lines 62-67, of Wynn et _al._). Since the Wynn system links employees, supervisors, and the accounting system at the time clock at the beginning and at the end of the employee's shift, it is clear that the employee has already been assigned to his or her shift _before_ the employee and the supervisor begin interacting with the system. Such "teaching away" in the Wynn

-23-

reference is self-contained evidence of the public's not having the invention in its possession. The Applicants respectfully point out that merely approving overtime for an employee <u>who is already assigned to a particular shift</u>, or approving a job change or a different work zone assignment for that employee, does not constitute making a shift assignment for that employee.

Because both the Kahn reference and the Wynn reference fail to recognize the results and advantages produced by the subject matter of claims 61-63, which are part of the invention "as a whole", and because the Wynn reference teaches away from providing a method of making shift assignments according to claims 61-63, such claims are not rendered obvious by the suggested combination of the Kahn and Wynn references. Accordingly, the rejections of claims 61-63 under section 103 of the Patent Laws are unwarranted and should be withdrawn.

In view of the foregoing, it is respectfully submitted that the present application is in a condition for allowance. Early and favorable action is respectfully requested.

The Examiner is encouraged to telephone the undersigned Attorney to discuss any matter that would expedite allowance of

-24-

Application No. 09/524,310
Filed: March 14, 2000
TC Art Unit: 3627
Confirmation No.: 8521

the present application.

Respectfully submitted,

LENNART BRABERG, ET AL.

By: Richard E. Gamache
Richard E. Gamache
Registration No. 39,196
Attorney for Applicants

WEINGARTEN, SCHURGIN,
   GAGNEBIN & LEBOVICI LLP
Ten Post Office Square
Boston, MA  02109
Telephone: (617) 542-2290
Telecopier: (617) 451-0313

REG/pjd
Enclosure
315032

-25-